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PATENT
Docket No. 57260US003IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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| Applicant(s): | Scott A. BURTON et al. |) | Group Art Unit: | 1618 |
| | |) | | |
| Serial No.: | 10/728,577 |) | Examiner: | Blessing M. Fubara |
| Confirmation No.: | 8901 |) | | |
| | |) | | |
| Filed: | 5 December 2003 |) | | |
| | |) | | |
| For: | POLYMER COMPOSITIONS WITH BIOACTIVE AGENT, MEDICAL ARTICLES, AND METHODS |) | | |

RESPONSE TO RESTRICTION REQUIREMENT AND ELECTION OF SPECIES

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

In response to the Restriction Requirement mailed 7 February 2007, Applicants elect, with traverse, Group I (claims 1-26, 54, 55, 60, and 71), drawn to a polymer composition described in product-by-process terms using an inverse emulsion, as well as claims directed to a medical article and wound dressing using the polymer composition, and a method of using the polymer composition. Applicants reserve the right to pursue examination of the non-elected claims in continuation or divisional applications.

The Examiner has characterized the polymer composition of Group I (and method of making in Group II) as one "that is an inverse emulsion." This is not entirely accurate. Claim 1 recites a "polymer composition preparable by a method comprising combining components comprising: an organic polymer matrix; an inverse emulsion . . .; a bioactive agent . . ." (emphasis added). Thus, the inverse emulsion is a component that is used to prepare the polymer composition.

The Examiner has also characterized the polymer composition of Group II (and method of making in Group IV) as one "that is not an emulsion." This is not entirely accurate either. Claim 27 recites a "polymer composition comprising a hydrophilic amine - containing polymer . . ." Because this claim is written as a product claim, as opposed to a product-by-process claim, it is not necessarily limited to being prepared from something that is an inverse emulsion or "not an emulsion."

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Each of claims 1 and 27 recites an amine-containing polymer selected from the group consisting of a poly(quaternary amine), a polylactam, a polyamide, and combinations thereof, and a bioactive agent incorporated or distributed therein, wherein the bioactive agent is selected from the group consisting of a silver compound, a copper compound, a zinc compound, and combinations thereof, wherein the silver compound has a solubility in water of at least 0.1 grams per liter in water.

Applicants respectfully request reconsideration and withdrawal or modification of the restriction requirement. It is respectfully submitted that the inventions as claimed can be readily evaluated in one search without placing undue burden on the Examiner. That is, all the claims are so interrelated that a search of one group of claims will reveal art to the others.

Were restriction to be effected between the claims of Groups I-IV, a separate examination of the claims in these four groups would require substantial duplication of work on the part of the U.S. Patent and Trademark Office. Even though some additional consideration would be necessary, the scope of analysis of novelty of all the claims of Groups I-IV would have to be as rigorous as when only the claims of Group I, for example, were being considered by themselves. Clearly, this duplication of effort would not be warranted where these claims of different categories are so interrelated. Further, Applicants submit that for restriction to be effected between the claims in Groups I-IV, it would place an undue burden by requiring payment of three separate filing fees for examination of the nonelected claims, as well as the added costs associated with prosecuting four applications and maintaining four patents.

In response to the Election of Species Requirement, Applicants elect, with traverse, the following species: (1) hydrophilic polymer as the species of the organic polymer matrix; and (2) foam as the form of the polymer composition. The claims that are readable on each of these species are as follows: (1) hydrophilic polymer matrix - - claims 1-26, 54, 55, 60, and 71 (because hydrophilic polymers and thermoplastic polymers are not necessarily mutually exclusive categories of polymers); and (2) foam - - claims 1-19, 21-26, 54, 55, 60, and 71.

Applicants' Representatives reserve the right to pursue examination of the non-elected species in continuation or divisional applications.

This election is with traverse to the extent that it is understood that (a) the requirement will be withdrawn upon the finding of an allowable genus; and (b) any species withdrawn from consideration will be transferred to the elected subject matter unless it is found

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patentably distinct from the elected or allowed claims. Applicants traversed on the grounds that the generic claim includes sufficiently few species that a search examination of all the species at one time would not impose a serious burden on the Examiner.

The Examiner is invited to contact Applicants' Representatives, at the below-listed telephone number if prosecution of this application may be assisted thereby.

CERTIFICATE UNDER 37 C.F.R. 1.8:

The undersigned hereby certifies that this paper is being transmitted by facsimile in accordance with 37 CFR §1.6(d) to the Patent and Trademark Office, addressed to Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 1st day of March, 2007, at 1:00 pm (Central Time).

Signature: Sue Dombroske
Name: Sue Dombroske

March 1, 2007
Date

AMM/reg

Respectfully submitted

By

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